

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

JOSE MARTINEZ
625 WYE ISLAND CT
ANNAPOLIS, MD 21401

Plaintiff

vs.

CAPITAL MANAGEMENT SERVICES,
LP
726 EXCHANGE STREET, SUITE 700
BUFFALO, NY 14210

Defendant

CIVIL NO. 1:11-cv-1710

JURY TRIAL DEMANDED

COMPLAINT

1. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (the "FDCPA").

JURISDICTION

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendant transacts business here.

PARTIES

4. Plaintiff, Jose Martinez, is a natural person who resides in the City of Annapolis, State of Maryland, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

5. Defendant, Capital Management Services, LP, (hereinafter “Defendant”) is a collection agency operating from an address of 726 Exchange Street, Suite 700, Buffalo, NY 14210, and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

FACTS

6. On or about May 2006, Plaintiff incurred a financial obligation that was primarily for personal, family or household purposes and is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5), specifically a credit card with Macys.
7. On August 20, 2010, Plaintiff filed a voluntary bankruptcy petition in the United States Bankruptcy Court for the District of Maryland, case number 10-29130.
8. The Credit Card for Macy’s was listed as a general unsecured debt on Schedule F of the Plaintiff’s bankruptcy petition.
9. Macy’s was properly noticed by the Bankruptcy Court of the Plaintiff’s bankruptcy case and subsequent discharge. *See Exhibit 1.*
10. Sometime thereafter, the alleged debt was consigned, placed or otherwise transferred to Defendant for collection from the Plaintiff.
11. On or about February 24, 2011, Defendant sent a dunning collection letter to Plaintiff which is a “communication” in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2). *See Exhibit 2.*
12. Exhibit 2 violates the FDCPA because it is an attempt to collect on a debt discharged in the Plaintiff’s bankruptcy.

13. Specifically, exhibit 2 violates 15 U.S.C. § 1692e(2) because it misstates the character, amount, or legal status of the alleged debt as the debt has been discharged in bankruptcy.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 et seq.

14. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
15. The foregoing acts and omissions of the Defendant constitute a violation of the FDCPA, specifically 15 U.S.C. § 1692e(2).
16. As a result of the Defendant's violation of the FDCPA, Plaintiff is therefore entitled to statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from the Defendant herein.

PRAYER FOR RELIEF

17. WHEREFORE, to redress the injuries caused by Defendant's conduct as stated in Paragraphs 1-16 above, Plaintiff hereby requests the following relief:
- for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendant;
 - for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendant;
 - for such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all claims so triable.

Dated: June 22, 2011

Respectfully submitted,

LAWRENCE & FISHER PLLC

/s/ Morgan W. Fisher

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